

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

MICHAEL WAYNE BIRCHFIELD

PETITIONER

V.

CIVIL ACTION NO. 3:23-CV-3136-DPJ-ASH

WARDEN, FCI YAZOO CITY LOW I

RESPONDENT

ORDER

This habeas petition is before the Court on the Report and Recommendation of Magistrate Judge Andrew S. Harris [8]. Michael Wayne Birchfield, a federal inmate, took exception to the Bureau of Prisons' calculation of his release date and to his place of confinement, and he sought relief via 28 U.S.C. § 2241. Pet. [1]. The Court directed [3] a response, which was provided [6]. On July 10, 2024, Judge Harris, in his thorough Report and Recommendation, recommended denying the petition, finding that Birchfield failed to exhaust his administrative remedies with the Bureau before turning to the courts and that, alternatively, Birchfield's own calculations were incorrect and this Court lacks authority to direct the Bureau as to where to hold inmates. Objections to the Report and Recommendation were due July 28, 2024, but none were filed by that date. *See* 28 U.S.C. § 636(b)(1)(C) (allowing 14 days to "serve and file" objections).

As reflected on the docket, the Report and Recommendation were mailed to Birchfield on July 10, but returned a week later as undeliverable [9] (label on envelope: "RETURN TO SENDER / ATTEMPTED – NOT KNOWN / UNABLE TO FORWARD"). Service by mail is considered complete upon the date the document is mailed to the recipient's last known address. Fed. R. Civ. P. 5(b)(2)(C). Moreover, as with every habeas petitioner in this Court, Birchfield

was warned at the outset that “failure to advise this Court of a change of address . . . will be deemed as a purposeful delay and contumacious act by the plaintiff and may result in the dismissal of your case.” Notice [1-2]. Considering the vicissitudes of incarceration, the Court waited an additional week past the due date for either a change of address or any objections to be filed, but none were.

Accordingly, the Report and Recommendation is adopted as the finding of this Court, and Birchfield’s petition [1] is denied and dismissed with prejudice. A separate final judgment will issue per Federal Rule of Civil Procedure 58.

SO ORDERED AND ADJUDGED this the 2nd day of August, 2024.

s/ Daniel P. Jordan III
CHIEF UNITED STATES DISTRICT JUDGE